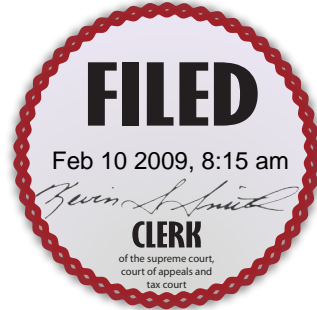


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

ROBERT JOSEPH BREWER, II,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 36A01-0806-CR-279

APPEAL FROM THE JACKSON CIRCUIT COURT
The Honorable William E. Vance, Judge
Cause No. 36C01-0405-FA-23

February 10, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Robert J. Brewer, II (“Brewer”) was convicted in Jackson Circuit Court of Class A felony child molesting, Class B felony sexual misconduct with a minor, Class B felony attempted sexual misconduct with a minor, two counts of Class C felony vicarious sexual gratification, and Class D felony vicarious sexual gratification. He was sentenced to an aggregate term of forty years. Brewer appeals and argues whether the evidence was sufficient to support his conviction for Class A felony child molesting.

We affirm.

Facts and Procedural History

A.K. was born on August 3, 1989. Brewer married A.K.’s mother in 1992. From June, 2003, to August 2, 2003, A.K. was thirteen and living with Brewer, her mother, and her brother.

During a period from June to August 2, Brewer gave A.K. a vibrator, told her how to use it, and asked her to use it in his presence. This conduct continued until one day during the same period, Brewer had A.K. use the vibrator, then he placed two fingers in her vagina to determine if she was “wet.” A.K. testified that this conduct occurred once or twice a week during the period between June and August 2, 2003. This conduct continued past August 2, 2003. In response, A.K. began to cut herself, which brought her to the attention of a school counselor, who notified police.

On May 20, 2004, the State charged Brewer with Class A felony child molesting, Class B felony sexual misconduct with a minor, Class B felony attempted sexual misconduct with a minor, two counts of Class C felony vicarious sexual gratification, and

Class D felony vicarious sexual gratification. Following a two-day trial, the jury found Brewer guilty as charged.

On May 20, 2008, the trial court sentenced Brewer to thirty years for Class A felony child molesting and ten years for Class B felony sexual misconduct with a minor, to be served consecutively. The trial court also sentenced him to ten years for Class B felony attempted sexual misconduct with a minor, four years for each count of Class C felony vicarious sexual gratification, and one and one-half years for Class D felony vicarious sexual gratification, to be served concurrent to the Class B felony sexual misconduct with a minor conviction. Brewer appeals.

Discussion and Decision

Brewer argues that the State did not establish that the conduct upon which the Class A felony child molesting is based occurred when A.K. was under the age of fourteen. When we review a claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the verdict and the reasonable inferences therein to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id.

Brewer contends that the State failed to establish that A.K. was under the age of fourteen when Brewer penetrated her sex organ with his finger. The testimony at trial contradicts this contention.

Q: Ummm, what happened that time?

A: I used that one and I got done, he said I was done.

Q: And did he do anything else to you at that time?
A: He stuck two fingers in to see if I was wet.
Q: Okay. He stuck two fingers into what?
A: My vagina.
Q: Did he say anything to you when he did this?
A: No.
Q: Did he later say that he was trying to check something?
A: He said he was just trying to see if I was wet or not.
Q: During the time you were thirteen from June to August of 2003, how often do you think this type of activity occurred?
A: Once or twice a week.

Tr. p. 45

The testimony of A.K. clearly established that Brewer penetrated her vagina with his fingers when she was thirteen. The evidence was therefore sufficient to support Brewer's conviction for Class A felony child molesting.

Affirmed.

BAILEY, J., and BARNES, J., concur.